DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
AUG 18 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Federal-State Joint	)	CC Docket No. 96-45
Board on Universal	)	
Service	)	

Comments of General Communication, Inc. on the Petitions for Reconsideration

Kathy L. Shobert
Director, Federal Affairs
901 15th St., NW
Suite 900
Washington, D.C. 20005
(202)842-8847

August 18, 1997

TABLE OF CONTENTS

I.	All Telecommunications Carriers Should Be Eligible to Receive Support for Providing Service to Rural Health Care Providers	1
II.	Overhead Costs Must Be Capped	4
III.	The Indexed Cap Should Be Retained	6
IV.	Pursuant to the Telecommunications Act, Support Must Be Portable	7
V.	All Telecommunication Carriers Must Contribute to Support	9
VI.	Study Areas Should Be Determined Fairly	9
VII.	Any Changes to the Separations Rules Must Be Referred to the Separations Joint Board	10
VIII.	Interstate Access Charges Should Not Be Assessed on Unbundled Network Elements	12
Conclusion		13

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
	)	

Comments of General Communication, Inc. on Petitions for Reconsideration

Pursuant to Section 1.429 of the Commission's rules, General Communication, Inc. (GCI) hereby submits comments on the Petitions for Reconsideration of the Report and Order[1] adopted on May 8, 1997. In the Report and Order, the Commission outlines the rules and regulations for universal service pursuant to Section 254 of the Communications Act.

I. All Telecommunications Carriers Should Be Eligible to Receive Support for Providing Service to Rural Health Care Providers

As outlined in GCI's petition for reconsideration and the Alaska Public Utilities Commission's (APUC) petition for reconsideration, the Commission must allow all carriers, including those not designated as eligible telecommunications carriers (ETCs) to receive support for universal service provided to rural health care providers. Otherwise, no carrier in Alaska will be capable of providing the services needed by the rural

---

[1] In the Matter of Federal-State Joint Board on Universal Service, CC Docket 96-45, FCC 97-157, 62 Fed. Reg. 32,862 (June 17, 1997).

health care providers. The Commission has the ability[2] to adopt this policy pursuant to the Telecommunications Act.

Under the process outlined in the current rules, in Alaska, no carrier could be designated an ETC for purposes of serving rural health care providers. The services needed by the rural health care provider are primarily interexchange service between the village and the regional center of Anchorage. The ILECs do not provide any toll service. This service is provided exclusively by the interexchange carriers, GCI and Alascom. The ILECs are beginning to go in the toll business in Alaska. However, these services are provided exclusively through a separate corporation who could not separately qualify for designation as an ETC.

The policy that only an ETC receive support for services provided to rural health care providers is inconsistent with the Communications Act and is contrary to the public interest.

Section 254(h)(1)(A) of the Communications Act states

> Health Care Providers For Rural Areas - A telecommunications carrier shall, upon receiving a bona fide request, provide telecommunications services which are necessary for the provision of health care services in a State, including instruction relating to such services, to any public or nonprofit health care provider that services persons who reside in rural areas in that State at rates that are reasonably comparable

[2]If the Commission determines it does not have the necessary authority to adopt this request, it should consider both GCI's and the APUC's petitions for reconsideration of this matter as requests for waiver of 54.201(a)(2) so that rural health care providers in the State of Alaska can receive the services outlined in the Telecommunications Act of 1996.

> to rates charges for similar services in urban areas in that State. A telecommunications carrier providing service under this paragraph shall be entitled to have an amount equal to the difference, if any, between the rates for services provided to hold care providers for rural areas in a State and the rates for similar services provided to other customers in comparable rural areas in that State treated as a service obligation as a part of its obligation to participate in the mechanism to preserve and advance universal service. (Emphasis added).

Congress specifically stated that a telecommunications carrier was eligible for the offset against its universal service obligation. Congress did not mandate that only eligible telecommunications carriers would be eligible to provide the service to rural health care providers. The language is similar to that adopted for schools and libraries.[3] The conference report is even more explicit.

> New subsection (h)(1)(A) provides that any telecommunications carrier shall, upon a bona fide request, provide telecommunications services necessary for the provision of health care services to any health care provider serving persons who reside in rural areas. Emphasis added.[4]

Under the rules, telecommunications carriers are not required to become eligible telecommunications carriers to provide service to schools and libraries and to receive the support. The Commission cannot adopt two different interpretations for the provisioning of universal service to rural health care providers and schools

---

[3]Section 254(h)((1)(B) directs "all telecommunications carriers" to provide service upon a bona fide request.

[4]Conference Report 104-458, page 133.

and libraries by telecommunications carriers. As mandated by Congress, the Commission must change its rule and allow all telecommunications carriers to provide universally supported services to rural health care providers.

II. Overhead Costs Must Be Capped

In the Report and Order and the subsequent Order on Reconsideration,[5] the Commission adopted a formula that establishes a range of reasonableness for the recovery of corporate operations expenses from the universal service fund. The Commission noted that "these expenses do not appear to be costs inherent in providing telecommunications services, but rather may result from managerial priorities and discretionary spending."[6] Several ILECs[7] ask the Commission to reconsider this position. They claim that the range of reasonableness established by the Commission "fails to allow for the full recovery of costs related to developing forward looking cost studies, pricing unbundled elements, justifying rural exemptions, planning for competition and filing local rate cases which flow from the agency's orders."[8] These carrier claim that establishing the reasonableness range will prevent them from

---

[5]Federal-State Joint Board on Universal Service, CC Docket 96-45, FCC 97-246, released July 10, 1997.

[6]Report and Order at paragraph 283.

[7]Petitions for Reconsideration filed by the Alaska Telephone Association, Fidelity Telephone, GVNW, ITCs and Western Alliance.

[8]Petition for Reconsideration of the Alaska Telephone Association at 2.

participating in federal regulatory proceedings.[9] The Commission should affirm its findings on this matter. The ILECs want competitive carriers and interexchange carriers to pay their costs of moving into a competitive environment. This is an absurd position and will at least delay, if not deter competitive carriers from entering a market.

In the competitive world, this does not happen. Take for example, a drugstore which is located in a certain neighborhood in a small town in America. A new drugstore comes to town and sets up shop right down the block from the first store. If the marketplace made the new entrant act as the ILECs requests in their petitions for reconsideration, the new entrant would have to pay all the costs to the original drugstore owner to be in a competitive marketplace. These costs would include more advertising, additional employees to offer better service, promotional activities, new employees to reprice items for promotions and for competition, a bigger sign to highlight the store, additional monies for community activities, etc. The list could go on forever. This is not even considered in a competitive marketplace and should not be considered here. Competitive carriers should not have to pay excessive corporate operations expenses which keep them out of the market. The items outlined above by the ATA show that they use those monies to keep competitors from entering the marketplace or to raise the price

[9]Petitions for Reconsideration filed by ATA, Fidelity Telephone, GVNW, ITCs and Western Alliance.

of entry so high that competitors will not enter.[10] The Commission struck the right balance by capping the amount of expenses ILECs can reasonably expect to recover.

III. The Indexed Cap Should Be Retained

The Commission continues the cap on the current high cost universal service fund to limit growth until such time as the Commission establishes forward looking proxy models to determine support for high cost areas.[11] Several ILECs[12] state that the cap should not be continued since it will be unnecessary once a proxy model system is established, the fund has never exceeded the cap and disasters may occur in the future which will impact the carriers. The Commission should continue the cap. Any extraordinary requests can be made at the point in time the disaster occurs. For example, the ATA notes that the cap should be removed because of the possibility of earthquakes in Alaska. A major earthquake has not occurred in Alaska since the 1960's. Minor tremors have occurred but they have not in any way affected the property of the ILECs or the provision of service. The cap should be kept. If and when a disaster should occur, the ILEC may petition the Commission for extraordinary help.

---

[10]This would be in violation of Section 253.

[11]USTA asks the Commission to allow Anchorage Telephone Utility (ATU), the largest ILEC in the state of Alaska to receive support based on embedded costs. The Commission should not adopt this policy. ATU serves half of the access lines in the state.

[12]Petitions for Reconsideration filed by ATA and Rural Telephone Coalition (RTC).

IV. Pursuant to the Telecommunications Act, Support Must Be Portable

Petitions for reconsideration submitted by many of the rural telephone companies[13] reiterate their pleas in the proceeding that the 1996 Act gives them special universal service consideration. They state that competitive carriers should not be allowed to receive support of any kind. They further state that portable support will drive up the costs of the ILEC's remaining subscribers.[14] They reiterate their carrier of last resort mandates and the takings issues outlined throughout the proceeding. Further they state they will be placed at a competitive disadvantage, receive deficient revenues, set the stage for billions of dollars in loan defaults, increase local rates and jeopardize universal service.

Pursuant to the pro-competitive goals and the goals of universal service, support must be portable. As outlined in the rules,[15] portability implements the principle of competitive neutrality and constrains the excessive costs of the incumbent without causing severe financial impact on the incumbent. By paying support to the competitive carrier based on the incumbents

---

[13]Petitions for Reconsideration of the ATA and Western Alliance.

[14]Petition for Reconsideration of ATA.

[15]As pointed out in GCI's Petition for Reconsideration, the Commission must clarify 54.307(a)(2) so that competitive LECs will receive support to the extent that carrier is an ETC and captures either customers previously served by the ILEC or customers never served by the ILEC. The rules do not clarify that the ILEC will lose support as they lose customers due to competition.

costs, the over investment tendencies of the incumbent will be constrained by the marketplace over time. This will not happen overnight, but the process will produce viable LECs that choose to continue to serve rural America under this new pro-competitive system. Section 254 was not designed to keep the incumbent LEC whole, but designed to ensure service is available through competition and supported where needed.

Rural telephone companies are not special in the sense espoused in their petitions. Congress is concerned about service to rural America. However, rural telephone companies were not exempted from competition or allowed to be kept whole. Rural telephone companies were given exemptions from complying with 251(c) of the Act because they pleaded that competition would not come to rural areas and that they would have to seek suspensions and modifications of the rules via complex regulatory proceedings until a potential competitor surfaced. Therefore, a compromise was reached to require interconnection only upon a bona fide request. This was fashioned after the equal access requirement.[16] Contrary to the assertions of the rural telephone companies, Congress did not intend to protect rural telephone companies from competition.

Further, the Supreme Court has determined that these companies are not entitled to recovery of all their historical costs. In Duquesne Light Co. v. Barasch, the Supreme Court

[16]Originally, the independent LECs opposed the equal access requirements.

dismissed a takings claim and said that rates can be based on "actual present value of the assets employed in the public service."[17] The Court rejected arguments that the Constitution mandates recovery of all historical costs.[18]

V. All Telecommunication Carriers Must Contribute to Support

ILECs should not be allowed to put the costs of their contribution to the universal service fund back on interexchange carriers. This is not a competitively neutral structure. ILECs will basically be passing their portion of support back to the interexchange carriers through access charges. This is contrary to the Telecommunications Act which states that all telecommunications carrier should contribute on an equitable and nondiscriminatory basis. If they are allowed to assess the charges back on the interexchange carriers as outlined by GVNW, the interexchange carriers will be overcontributing.

VI. Study Areas Should be Determined Fairly

In the Report and Order, the Commission urges state commissions to consider changes in study areas, particularly if carriers serve non-contiguous locations in the state. This would encourage carriers to become ETCs. Several commenters urge the Commission to not allow state commissions to make such a determination. The Commission should continue to support this position. Pursuant to the Telecommunications Act, to become an

---

[17]488 U.S. 299, 308 (1989).

[18]Id at 315-16.

ETC, a carrier must serve the entire service area. In the case of a rural telephone company, their service area equals their study area unless the Commission and the States established a different definition. The Commission is encouraging the states to look at this issue. The Commission is not making a pronouncement to the state commissions to institute this policy. This decision is in the first instance, an issue the state commission should address. The Commission should accept any such determination made by the state commission.

VII. Any Changes to the Separations Rules Must Be Referred to the Separations Joint Board

United Utilities request that the Commission reform the policy that in their view double counts local minutes through the switch. This was not an issue in this proceeding. Any such determination must be made by the Separations Joint Board. However, it may be useful to remember why local minutes are counted as an originating and terminating minute in the switch and what would happen if any changes were implemented.

In adopting the policy, the Commission explained that different allocation factors could be used. The Commission proposed using among other things SMOU or DEM. The Commission noted that

> the parties supporting the use of SMOU argue that the difference between these factors is that measured DEM counts each local minute of use twice because each local call is counted as one originating and one terminating. Each toll minute, they contend is only counted

once.[19]

The Commission adopted the Joint Board Recommended Decision which choose a DEM allocator. The Joint Board felt

> that DEM, when compared to the other allocators suggested, better reflects the state and interstate usage of local dial switching equipment. We also believe that relative use is a reasonable allocator of these costs.[20]

The Joint Board recommended weighting DEM for small study areas.[21] The Joint Board and Commission did not adopt SMOU as proposed by United Utilities in its Petition for Reconsideration.

As Margot Smiley Humphrey stated in testifying before the Separations Joint Board on August 8, 1997, the process of separations reform is result oriented. The members usually figure out what changes can occur from an overview and then will institute those changes in the separations manual. The counting of both the origination and termination of local minutes was part of an overall process that instituted DEM weighting for smaller carriers. To now, change how the minutes are counted would skew the process and cause an overallocation of switching costs to the interstate jurisdiction. If when separations reform was instituted in 1987 local minutes were only counted once, the weighting factors for small ILECS would be different.

---

[19]Amendment of Part 67, 2 FCC Rcd 3787, 3788 (1987).

[20]Amendment of Part 67, 2 FCC Rcd 2551, 2559 (1987).

[21]Id at 2560-61.

VIII. Interstate Access Charges Should Not Be Assessed on Unbundled Network Elements

The Commission correctly adopts the policy not to assess Part 69 access charges on unbundled network elements for all ILECs. To allow ILECs to assess access charges on UNEs would amount to an overrecovery by the ILECs. Further, to impose access charges on UNEs would be inconsistent with the Telecommunications Act of 1996,[22] particularly those related to resale and the use of UNEs. Exchange access is not a service provided on a retail basis to end users. Pursuant to Section 251(c)(4), an ILEC must offer for resale "any telecommunication service that the carrier provides at retail to subscribers who are not telecommunication carriers." A telecommunications carrier who purchases UNEs from an ILEC is purchasing that element for its own use in its network. No other carrier may use that capability except by going through the purchaser of the UNE. The ILEC is being appropriately compensated for the UNE and should not receive a double recovery of costs through access charges on those elements.

---

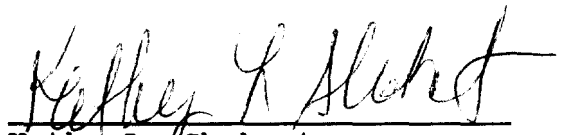
[22]The Eighth Circuit confirmed that a "competing carrier may obtain the ability to provide telecommunications services entirely through an incumbent LEC's unbundled network elements is reasonable. . ." Iowa Utilities Board v. FCC, Case No. 96-3321, 8th Circuit, decided July 18, 1997, page 143.

Conclusion

The Commission must allow are carriers to offer services to rural health care providers. Further, the Commission should affirm its policies and rules as outlined above.

Respectfully submitted,

GENERAL COMMUNICATION, INC.



Kathy L. Shobert
Director, Federal Affairs
901 15th St., NW
Suite 900
Washington, D.C. 20005
(202)842-8847

August 18, 1997

STATEMENT OF VERIFICATION

I have read the foregoing, and to the best of my knowledge, information and belief there is good ground to support it, and that it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed August 18, 1997.

Kathy L. Shobert
Director, Federal Affairs
901 15th St., NW
Suite 900
Washington, D.C. 20005
(202)842-8847

CERTIFICATE OF SERVICE

I, Kathy L. Shobert, do hereby certify that on this 18th day of August, 1997 a copy of the foregoing was mailed by first class mail, postage prepaid, to the parties listed below.

Kathy L. Shobert

Sharon L. Nelson
Washington Utilities and
Transportation Commission
Chandler Plaza Building
1300 South Evergreen Park Dr., SW
Olympia, WA 98504-7250

Julia Johnson
Florida Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Laska Schoenfelder
South Dakota PUC
500 E. Capitol Ave.
Pierre, SD 57501-5070

Kenneth McClure
Missouri PSC
301 W. High Street
Suite 530
Jefferson City, MO 65102

Chariman Reed E. Hundt
Federal Communications Commission
1919 M St., NW
Room 814
Washington, DC 20554

Rachelle Chong
Federal Communications Commission
1919 M St., NW
Room 844
Washington, DC 20554

Susan Ness
Federal Communications Commission
1919 M St., NW
Room 832
Washington, DC 20554

Martha S. Hogarty
Public Counsel for the State of Missouri
P. O. Box 7800
Harry S. Truman Building
Room 250
Jefferson City, MO 65102

Charles Bolles
South Dakota PUC
State Capitol Bldg.
500 E. Capitol Ave.
Pierre, SD 57501-5070

Deborah A. Dupont
Federal Communications Commission
Common Carrier Bureau
2000 L St., NW, Room 257
Washington, DC 20036

Brian Roberts
California PUC
505 Van Ness Ave.
San Francisco, California 94102

William Howden
Federal Communications Commission
2000 L St., NW, Room 812
Washington, DC 20036

Michael A. McRea
DC Office of the People's Council
1133 15th St., NW, Room 500
Washington, DC 20005

Sam Loudenslager
Arkansas PSC
1000 Center St.
P. O. Box 400
Little Rock, Arkansas 72203

Clara Kuehn
Federal Communciations Commission
2000 L St., NW, Room 257
Washington, DC 20036

Rafi Mohammed
Federal Communciations Commission
2000 L St., NW, Room 812
Washington, DC 20036

Jonathan Reel
Federal Communciations Commission
2000 L St., NW, Room 257
Washington, DC 20036

Paul Pederson
Missouri PSC
P. O. Box 360
Truman State Office Bldg.
Jefferson City, MO 65102

Teresa Pitts
Washington Utilities and
Transportation Commission
P. O. Box 47250
Olympia, WA 98504-7250

James Bradford Ramsay
NARUC
1102 ICC Building
1201 Constitution Ave., NW
Washington, DC 20423

Gary Seigel
Federal Communications Commission
Common Carrier Bureau
2000 L St., NW, Room 812
Washington, DC 20036

Terry Monroe
NY PSC
3 Empire State Plaza
Albany, NY 12223

Eileen Benner
Idaho PUC
P. O. Box 83720
Boise, ID 83720-0074

Lorraine Kenyon
Alaska PUC
1016 West Sixth Ave., Suite 400
Anchorage, AK 99501

Debra M. Kriete
Pennsylvania PUC
P. O. Box 3265
Harrisburg, PA 17105-3265

Mark Nadel
Federal Communications Commission
1919 M St., NW, Room 542
Washington, DC 20554

Gary Oddi
Federal Communications Commission
2000 L St., NW, Room 257
Washington, DC 20036

Jeanine Poltronieri
Federal Communications Commission
2000 L St., NW, Room 257
Washington, DC 20036

Pamela Szymczak
Federal Communications Commission
2000 L St., NW, Room 257
Washington, DC 20036

Mark Long
Florida PSC
2540 Shumard Oak Blvd.
Gerald Gunter Building
Tallahassee, FL 32399-0850

Sandra Makeeff
Iowa utilities Board
Lucas State Office Bldg.
Dew Moines, IA 50319

Philip F. McClelland
Pennsylvanai Office of Consumer Advocate
1425 Strawberry Square
Harrisburgh, PA 17120

Andrew Mulitz
Federal Communications Commission
2000 L St., NW, Room 257
Washington, DC 20036

Whiting Thayer
Federal Communications Commission
2000 L St., NW, Room 812
Washington, DC 20036

Deborah S. Waldbaum
Colorado Office of Consumer Counsel
1580 Logan St., Suite 610
Denver, CO 80203

Alex Belinfante
Federal Communications Commission
1919 M St., NW
Washington, DC 20554

Larry Povich
Federal Communications Commission
1919 M St., NW
Washington, DC 20554

ITS
1919 M St., NW, Suite 246
Washington, DC 20554